

# HOUSE BILL REPORT

## SSB 5722

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**As Reported by House Committee On:**

Environment & Energy  
Appropriations

**Title:** An act relating to reducing greenhouse gas emissions in buildings.

**Brief Description:** Reducing greenhouse gas emissions in buildings.

**Sponsors:** Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Nguyen, Liias, Lovelett, Nobles, Pedersen, Saldaña and Stanford; by request of Office of the Governor).

**Brief History:**

**Committee Activity:**

Environment & Energy: 2/17/22, 2/22/22 [DP];  
Appropriations: 2/25/22, 2/28/22 [DPA].

**Brief Summary of Substitute Bill  
(As Amended By Committee)**

- Requires the Department of Commerce (Commerce) to adopt energy management and benchmarking requirements for certain commercial buildings between 20,000 and 50,000 square feet and multifamily residential buildings 50,000 square feet or larger (Tier 2 covered buildings) by December 1, 2023, and requires building owners to report compliance with these requirements beginning July 1, 2027.
- Requires Commerce to evaluate benchmarking data to determine energy use and greenhouse gas emissions averages by building type by July 1, 2029.
- Requires Commerce to adopt rules for performance standards for Tier 2 covered buildings by December 31, 2030.
- Authorizes utilities to provide incentive payments to Tier 2 covered buildings based on a building owner's adoption of energy management

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

and benchmarking requirements, for up to \$150 million in total.

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## HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** Do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

**Staff:** Megan McPhaden (786-7114).

### **Background:**

#### State Energy Code.

The State Energy Code (Energy Code) is part of the State Building Code, which sets the minimum construction requirements for buildings in the state. The Energy Code provides a maximum and minimum level of energy efficiency for residential buildings and the minimum level of energy efficiency for nonresidential buildings.

The State Building Code Council (Council) maintains the Energy Code. The Council reviews, updates, and adopts model state building codes every three years. The Council must adopt codes that require buildings constructed from 2013 through 2031 to move incrementally toward a 70 percent reduction in energy use by 2031.

The Department of Commerce (Commerce) must develop and implement a strategic plan to enhance energy efficiency in and reduce greenhouse gas (GHG) emissions from homes, buildings, districts, and neighborhoods. This strategic plan must be used to help direct future Energy Code changes.

#### Energy Performance Standard.

Commerce must establish by rule state energy performance standards (performance standards) for covered commercial buildings. Covered commercial buildings include those where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area.

The performance standards seek to maximize reductions in GHG emissions from the building sector. The performance standards include energy use intensity targets by building type and methods of conditional compliance that include an energy management plan, operations and maintenance program, energy efficiency audits, and investments in energy efficiency measures designed to meet the targets.

Commerce may impose an administrative penalty on a building owner for failing to submit documentation demonstrating compliance with the requirements of the performance standard. The penalty may not exceed \$5,000 plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to \$1 per year per gross square foot of floor area. Commerce may by rule, adjust the maximum penalty rates for inflation.

#### Early Adoption Incentive Program.

The performance standards include an early adoption incentive program for covered building owners who comply with the performance standards before the required date. Covered building owners may receive a base incentive payment of 85 cents per gross square foot of floor area, excluding parking, unconditioned, or semiconditioned spaces. Commerce may not approve incentive payments that exceed a total of \$75 million.

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### **Summary of Bill:**

#### Energy Management and Benchmarking Requirements.

By December 1, 2023, Commerce must adopt by rule state energy management and benchmarking requirements for Tier 2 covered buildings. Tier 2 covered buildings are: (1) multifamily residential, nonresidential, hotel, motel, and dormitory buildings with more than 20,000 square feet but not more than 50,000 square feet, excluding the parking garage area; and (2) multifamily buildings that are 50,000 square feet or larger. A small business economic impact statement must be included as part of the rule making process.

Commerce's requirements for Tier 2 covered buildings must be consistent with the performance standards for buildings that are redefined as Tier 1 buildings. Tier 1 buildings are buildings where the sum of nonresidential, hotel, motel, and dormitory floor areas are equal to or exceed 50,000 gross square feet, excluding the parking garage area.

Commerce's adopted administrative procedure requirements must include exemptions for financial hardship and an appeals process for administrative determinations, including penalties imposed by Commerce.

Commerce must provide a customer support program to building owners that includes outreach, informational materials, and technical assistance with benchmarking, and must consider under-resourced buildings.

By July 1, 2025, Commerce must notify Tier 2 covered building owners of Commerce's adopted requirements. Tier 2 covered building owners must submit reports with their compliance plans to Commerce by July 1, 2027, and every five years thereafter. Reports are limited to include energy management plans, operations and maintenance plans, and energy use analysis through benchmarking.

#### Incentive Payments.

Commerce must establish an incentive program to supplement the cost to the building owner or tenant to implement the requirements. Commerce may implement a tiered incentive structure for upgrading multifamily buildings for multifamily building owners willing to commit to antidisplacement provisions.

Tier 2 eligible building owners that comply with benchmarking, energy management, and operations and maintenance planning requirements may receive an incentive payment under the state's early adoption incentive program for the energy performance standard. This base incentive payment is 30 cents per gross square foot of floor area, excluding parking, unconditioned, or semiconditioned spaces. Commerce may authorize any participating utility, regardless of fuel-specific savings, serving a Tier 2 covered building to administer the incentive payment. Commerce may not certify Tier 2 covered building owners for an incentive payment if the payment is likely to result in total incentive payments more than \$150 million.

#### Administrative Penalties.

Commerce may adopt rules to impose administrative penalties, not to exceed 30 cents per square foot, to Tier 2 covered building owners who do not submit documentation demonstrating compliance with energy management and benchmarking requirements. Funds collected from the collection of penalties must be deposited into the Low-Income Weatherization and Structural Rehabilitation Assistance Account. Expenditures made with these funds must be reinvested into the state Energy Performance Standard Program to support compliance with the standard.

#### Energy Performance Standards.

By July 1, 2029, Commerce must evaluate benchmarking data to determine energy use and GHG emissions averages by building type. Commerce must submit a report to the Legislature and the Governor by October 1, 2029, outlining recommendations for cost-effective building performance standards for Tier 2 covered buildings, the estimated costs for building owners to implement the performance standards, and anticipated implementation challenges.

By December 31, 2030, Commerce must adopt rules to include Tier 2 covered buildings in the state's performance standards. Commerce must consider the age of buildings in the performance standard targets, and Commerce may adopt performance standards for multifamily residential buildings on a longer timeline than other tier 2 covered buildings. Commerce must include a small business economic impact statement as part of the rule making. The rules may not take effect before the conclusion of the 2031 legislative session.

The energy use intensity targets under the performance standards may now incorporate renewable energy produced on a campus that is not attached to the building.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Washington cannot meet its statutory greenhouse gas (GHG) emissions limits without meaningfully reducing emissions within the building sector. Increasing energy efficiency is the cheapest and fastest way to reduce GHG emissions from buildings, and this bill will maximize energy efficiency in buildings across our state. The goal of this bill is to lower emissions from buildings in a way that is incentive-based. It will improve the performance of older, existing structures. It will result in lower utility costs for low-income residents in the long run. Economic incentives, standards, and regulations are necessary because market forces can no longer move change fast enough. The bill offers an adequate timeframe to bring buildings into compliance, focuses on low cost/no cost actions that building owners can take to reduce utility costs and save money, and provides technical and financial assistance to building owners and managers. Examples of the operations and maintenance work include changing filters, adjusting thermostats, and ensuring lighting is used optimally. The incentive program would help assist with the cost of compliance to building owners, would be used in addition to available utility incentive funds, and it incentivizes building owners to protect tenants from displacement. The bill gives priority to building owners who may need more assistance meeting the requirements, which is critical. The appeals process under the 2019 Clean Buildings Act was frustrating for some, and this bill includes language to ensure that anyone working to comply with these standards would have a strong process to appeal if necessary. This bill aligns with the 2021 State Energy Strategy recommendations for the building sector. Buildings account for 27 percent of GHG emissions in the state, and in at least one city they account for more than half of the city's GHG emissions. There is a lot of interest in this issue from cities because cities need to cut their GHG emissions due to commitments they've made.

(Opposed) None.

(Other) There was a lot of collaboration during this bill's development to respond to concerns that have been resolved. The bill is now a better proposal. This brings many more buildings into the program which makes it much more complicated than the buildings bill from 2019. The Legislature should take an active role in the implementation of this legislation. The building industry was hit hard by COVID-19 and this is not a good time to add new requirements to building owners. The program will include 50,000 additional buildings in the state. Building owners of small and medium-sized buildings will see some higher costs.

**Persons Testifying:** (In support) Senator Joe Nguyen, prime sponsor; Anna Lising, Office of the Governor; Emily Salzberg, Department of Commerce; Jon Grant, Low Income Housing Institute; Christopher Patano, EHDD and American Institute of Architects Washington Council; Martin Gibbins, League of Women Voters of Washington; and R. Court Olson, People for Climate Action.

(Other) Greg Hanon, National Association for Industrial and Office Parks; and Peter Godlewski, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

**Staff:** Jessica Van Horne (786-7288).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment & Energy:**

The amended bill adds a null and void clause, making the bill null and void unless funded in the budget.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

### **Staff Summary of Public Testimony:**

(In support) None.

(Opposed) None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.